IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.06.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

O.S.A..Nos. 115 to 118 of 2007
and connected Miscellaneous Petitions

1.N. Benjamin Franklin
Member, Immanuel Lutheran Church
12, 70 Feet Road
Jawahar Nagar
Chennai 600 082.

2.Y. Tamilselvan
Navalkaddu Luthern Church
Boothapandi Post
Kanyakumari District.

3.Rev.C.H. Alfred
Pastor
Calvary Lutheran Church
Perurkada
Trivandrum. ... Appellant in all the appeals.

(Appellants representing themselves as well as the Member of India Evangelical Lutheran Church of Nagercoil, Ambur and Trivandrum Synods)

-vs-

1. India Evangelical Lutheran Church
a registered Society rep. By its
General Treasurer Mr. J. Gnanajothi
No.21 Eldams Road, Chennai 600 018.

2.India Evangelical Lutheran Church
(Nagercoil Synod)
321 Lutheran Compound. K P Road
Nagercoil.

3.India Evangelical Lutheran Church
(Ambur Synod)
Mission Compound, Ambur,
Vellore District.

4.India Evangelical Lutheran Church
(Trivandrum Synod)
Mission Compound
Perurkada, Trivandrum.

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5.Rev.P.K. Pauldurai
Election Officer
I E L C Central Officer
321 Lutheran Compound, K P Road
Nagercoil 629 001.

6.M.S. Palanisamy
Administrator/Overseer I E L C
No.28/35 Dr. Radhakrishnan Nagar
Main Road, Thiruvanmiyur
Chennai 600 041. .. Respondents in all the appeals.

Appeals against the common order and decreetal order dated 23.04.2007 made in O.A.Nos.355 to 358 of 2007 in C.S.No.260 of 2007 on the file of this Court in its Original Side.

For appellants :: Mr. R. Thiagarajan

For respondents :: Mr. P. Selvaraj for R.1

Mr. S.V. Durai Solaimalai for R.5

Not ready notice regarding R.2 to R.4

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COMMON JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

The above appeals are directed against the order of the learned single Judge dated 23.04.2007 made in O.A.No.355 to 358 of 2007 in C.S.No.260 of 2007, filed by the plaintiffs praying for a deceree of mandatory injunction, directing the first defendant, viz., India Evangelical Lutheran Church (in short, "I.E.L.C."), to hold the Election through the Election Commissioner of I.E.L.C., for all the Circles, three Synods, viz., Ambur, Nagercoil and Trivandrum and Apex Body, viz., I.E.L.C. in accordance with the Constitution and Bye-laws of the Synods and Apex Body, by appointing a retired Judge of this Court as Election Officer; for declaration that the 5th defendant in the suit having been disqualified as Election Commissioner and therefore, holding the post as illegal; for permanent injunction against the 5th defendant from holding various posts, for mandatory injunction directing the first respondent to levy the assessment payable by the respective Churches as per the Constitution and Bye-laws of Synods and I.E.L.C. and effect assessment and collection, etc.

2. Pending suit, the above said interim applications, viz., O.A.Nos.355 to 358 of 2007 have been filed, for mandatory injunction, directing the first defendant to hold elections for all Circles, three Synods and Apex Body; interim injunction against the 5th defendant from holding the office; interim

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injunction directing the first defendant to levy the assessment payable by the respective Churches and interim injunction against the first defendant from holding elections through the 5th defendant. While disposing of the said applications, the learned single Judge has passed the following order.

> "a) Justice A.K. Rajan (retired) is appointed in this place of Justice J. Kanakaraj, on the same terms and conditions subject to which Justice J. Kanakaraj was appointed by the Division Bench of this court.
> b) Justice A.K. Rajan, with the assistance of associate member Mr. M.S. Palanisamy shall hold elections to Synods as well as to the post of President of IELC in accordance with the directions issued by the Division Bench of this Court and confirmed by the Supreme Court in Civil Appeal in C.A.Nos.4122 to 4124 of 2006.
> c) With regard to the quantum of assessment to be paid by the member churches, the administrators shall be entitled to decide the issue.
> d) With regard to the Circle Elections already conducted in pursuance of the orders passed by the Division Bench, it is open to the appellants as well as the respondents 2 to 4 to seek suitable directions or modifications from the Division Bench.
> (e) The fifth respondent who has issued the election notification as the Election Commissioner shall be entitled to perform ministerial function as directed by the administrators. "

3. While it is admitted that as far as Circle elections are concerned, they are already conducted, the main grievance of the appellants is that the election in respect of the Circles, synods and for the post of President of I.E.L.C. can be conducted only after the quantum of assessment to be paid by the members of the Churches are ascertained. Therefore, according to the learned counsel for the appellants, the order of the learned single Judge means that the quantum of assessment to be paid by the member Churches can be ascertained after the elections are completed, which according to him is against the direction of the Supreme Court in Civil Appeal Nos.4122 to 4124 of 2006 (Nelson and another vs. Kallayam Pastorate and others). A reading of the portion of the judgement of the Apex Court makes it clear that the elected members in respect of Ambur Synod and Church Council can take over their respective activities from the Administrators and the Administrators shall however continue to oversee the functions of the Church Council and Ambur synod, and the elections in respect of Nagercoil Synod would be conducted under the supervision of the learned Administrators, directing the learned Administrators to see that the elections of the two Synods are held as expeditiously as possible.

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4. It is seen that Justice A.K. Rajan (Retired), the learned Administrator in his report has found that as per the complaints received from all the three Synods, the expenditure incurred by them for construction of Churches etc., and the salary to the Paster are more than the assessment and therefore, they need not pay any assessment and in such circumstances the learned Administrator has taken a decision that this aspect can be considered after the elections, when the question of payment of the balance of 50% of the assessment arises. Accordingly, the learned Administrator in his report has stated,

> "6.04: Therefore, in order to ensure a wider participation in the election, the last date for payment is extended. One more chance is given to all the Pastorates to pay the dues (as determined by the Church Council on 06.10.2006 the 50% of the assessment upto December, 2005) as condition precedent to take part in the election to the Synod and I.E.L.C."

5. A further reference to the report of the Administrator clearly shows that earlier occasion the Division Bench of this Court has not interfered with the direction of the Administrators as modified by the Church Council in relation to payment of 50% of the assessment amount as a condition president to participate in the election.

6. It is now informed that the period of old office bearers comes to an end recently. It is made clear that till newly elected body of office bearers take over the charge, the old body office bearers shall continue under the supervision of the learned Administrators.

In view of the above said position, we are not inclined to interfere with the order passed by the learned single Judge and accordingly, we confirm the order made in O.A.Nos.355 to 358 of 2007 in C.S.No.260 of 2007. In view of the same the appeals fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Hon'ble Mr. Justice A. K. Rajan, (Retd.,)
High Court, Madras.
Now residing at No. (S-79), No.5,
16th Street, "S" Block, Anna Nagar,
Chennai 40.

2. The Sub Assistant Registrar,
Original Side, High Court, Madras.

+ 4 ccs to Mr. R. Thiagarajan, Advocate SR no. 33901

+ 4 ccs to Mr. M. P. Selvaraj, Advocate SR No. 33167

JRG(CO)
SR/19.6.2007

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